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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

ABDULLAH DANONI BYANOONI,

Defendant and Appellant.

B204766

(Los Angeles County
Super. Ct. No. GA070549)

APPEAL from a judgment of the Superior Court of Los Angeles County,
David S. Milton, Judge. Affirmed.

James Koester, under appointment by the Court of Appeal, for Defendant
and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General,
Susan D. Martynec and Robert M. Snider, Deputy Attorneys General, for Plaintiff
and Respondent.

Abdullah Byanooni appeals from the judgment entered following a jury trial in which he was convicted of grand theft of personal property (Pen. Code, § 487, subd. (a)). He was placed on formal probation and execution of his sentence of three years was suspended. He contends the prosecutor's comment that the defense attorney was an "excellent storyteller" was intended to undermine counsel's integrity and was misconduct. For reasons stated in the opinion, we affirm the judgment.

FACTUAL AND PROCEDURAL HISTORY

On August 5, 2007, Robert Munoz was working in loss prevention for the Costco store in Alhambra when he saw appellant standing in front of a digital camera display. Appellant selected three of the packaged Kodak digital cameras, placed them in the bottom portion of his shopping cart, and pushed the cart to the appliance aisle. There, he moved the packages from the bottom of the cart to the top portion of the cart and then used keys to open all three packages. After opening the packages, he removed the cameras and placed them in his "cargo pants shorts." After discarding the empty packages behind other merchandise in the aisle, he returned with his shopping cart to the camera display. He took three more digital camera packages, placed them in his cart and walked back to the appliance aisle, where he again used keys to open the three packages. Upon removing the cameras from their packages, he again concealed the cameras in his shorts.

Appellant walked to the front of the store, where he left his cart, and then exited Costco. Munoz approached appellant and identified himself as Costco security. When Munoz asked appellant if he knew why he was being stopped, appellant said, "the cameras." When Munoz told appellant they were going back inside the store, appellant at first complied, but when he and Munoz were approximately ten feet into the store, appellant attempted to flee. Munoz grabbed appellant, and they struggled. With the assistance of a security guard, Munoz handcuffed appellant. Shortly thereafter, the police arrived. Munoz recovered the cameras from appellant's person. Each camera was priced at \$199.99.

While there were security video cameras in the stores, none were pointed toward the area where appellant selected the cameras or where he opened the packages and placed the cameras in his pockets. There were video cameras at the entrance and exit doors, but Munoz never looked at the video for that day. The video from that day was not preserved. Images are preserved on a computer hard drive and are retained for approximately two weeks. Munoz believed it was not necessary to maintain any video related to this incident “because it was just so open and shut, [Munoz] had all the observations on him, and [appellant] didn’t make an attempt to pay for the merchandise.”

The defense rested without presenting evidence or calling witnesses.

During the first portion of closing argument, the prosecutor summarized the evidence, noted that it had been a short trial and argued that the prosecution had met its burden of proof with its one witness, Mr. Munoz. Near the conclusion, the prosecutor stated, “In a moment I’m going to sit down. Mr. Duffy [defense counsel] is going to present his argument on behalf of [appellant]. I have had the pleasure of working with Mr. Duffy before, and Mr. Duffy is an excellent storyteller, and I look forward to hearing his argument.” Following appellant’s objection, the court responded, “Maybe he thinks you are. It’s just argument.”

DISCUSSION

Appellant contends that the prosecutor’s closing reference to defense counsel as an “excellent storyteller” was “meant to cast aspersions about the integrity or honesty of defense counsel and was misconduct.” We disagree. “The applicable federal and state standards regarding prosecutorial misconduct are well established. “A prosecutor’s . . . intemperate behavior violates the federal Constitution when it comprises a pattern of conduct “so egregious that it infects the trial with such unfairness as to make the conviction a denial of due process.”” [Citations.] Conduct by a prosecutor that does not render a criminal trial fundamentally unfair is prosecutorial misconduct under state law only if it involves ““the use of deceptive or reprehensible methods to attempt to persuade either the court or the jury.”” [Citation.] [Citation.] ‘[W]hen the claim focuses upon comments made by the prosecutor before the jury, the question is whether there is a

reasonable likelihood that the jury construed or applied any of the complained-of remarks in an objectionable fashion.’ [Citation.]” (*People v. Smithey* (1999) 20 Cal.4th 936, 960.)

“A prosecutor commits misconduct if he or she attacks the integrity of defense counsel, or casts aspersions on defense counsel. [Citations.] ‘An attack on the defendant’s attorney can be seriously prejudicial as an attack on the defendant himself, and, in view of the accepted doctrines of legal ethics and decorum [citation], it is never excusable.’ [Citation.]” (*People v. Hill* (1998) 17 Cal.4th 800, 832.) “It is generally improper for the prosecutor to accuse defense counsel of fabricating a defense [citations] or to imply that counsel is free to deceive the jury. [Citation.] Such attacks on counsel’s credibility risk focusing the jury’s attention on irrelevant matters and diverting the prosecution from its proper role of commenting on the evidence and drawing reasonable inferences therefrom. [Citations.] [¶] Nevertheless, . . . misconduct claims . . . have been rejected where the prosecutor anticipates the flaws likely to appear in counsel’s closing argument based on evidence that was introduced [citation], and where the prosecutor criticizes the defense theory of the case because it lacks evidentiary support. [Citation.]” (*People v. Bemore* (2000) 22 Cal.4th 809, 846.) Further, claims have been rejected where the prosecutor has appeared gracious, reminded the jury it should not be distracted from the evidence, or implied that defense counsel’s job was to confuse the jury. (See *People v. Lewis* (2006) 39 Cal.4th 970, 1061; *People v. Breaux* (1991) 1 Cal.4th 281, 305-306; *People v. Goldberg* (1984) 161 Cal.App.3d 170, 190.)

Here, the prosecutor’s remark was not misconduct. It was neither a deceptive nor reprehensible attempt to persuade the court or jury. Nor was it an attack on defense counsel’s integrity or credibility. At most, it was an observation that no matter how engaging opposing counsel’s argument might be, his narrative skills would be unlikely to overcome the virtually uncontradicted evidence of appellant’s guilt. There is no reasonable possibility the jury could have construed it as anything more than an encouragement to focus on the evidence presented at trial.

DISPOSITION

The judgment is affirmed.

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MANELLA, J.

We concur:

WILLHITE, Acting P. J.

SUZUKAWA, J.